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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

VERONICA GUTIERREZ, *et al.*,

Plaintiffs,

v.

WELLS FARGO & COMPANY, *et al.*,

Defendants.

Civil Case No.: CV-07-5923 WHA (JCSx)

**DECLARATION OF DAVID M. JOLLEY
IN SUPPORT OF OPPOSITION TO
PLAINTIFFS' MOTION FOR
JUDGMENT FOLLOWING REMAND**

DECLARATION OF DAVID M. JOLLEY

1
2 1. I am an attorney in the law firm of Covington & Burling LLP, counsel for
3 Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) in this action. I am licensed to practice law
4 in the State of California. The matters set forth herein are true and correct of my own personal
5 knowledge and, if called as a witness, I could and would testify competently thereto.

6 2. In early to mid February 2010, I telephoned plaintiffs’ counsel multiple
7 times, leaving a series of voicemail messages asking whether plaintiffs were still pursuing any
8 relief based on a misrepresentation theory (as opposed to the claim that Wells Fargo’s posting
9 practice itself was unlawful). Wells Fargo was preparing its motion for summary judgment, and
10 the bank needed to know whether plaintiffs were conceding that they had no evidence to support
11 an award based on their misrepresentation-based claims, given that plaintiffs’ damages report
12 from their expert Arthur Olsen did not purport to provide a basis for any monetary award based
13 on such misrepresentations. On February 17, 2010, I received a responsive email from
14 plaintiffs’ counsel Barry Himmelstein, which copied plaintiffs’ counsel Richard Heimann,
15 Michael Sobol, and Richard McCune, stating in relevant part: “We agree that Mr. Olsen has not
16 attempted to quantify the amount of damages or restitution resulting from any classwide
17 misrepresentation-based claims, and we do not intend to seek such damages at the upcoming
18 trial.” A true and correct copy of this email is attached hereto as **Exhibit 1**.

19 3. Attached as **Exhibit 2** is a true and correct copy of the portion of Wells
20 Fargo’s current Consumer Account Agreement containing its disclosure about posting order.

21 4. Attached as **Exhibit 3** is a true and correct copy of Trial Exhibit (“TX”)
22 No. 86 from the trial in this case.

23 5. Attached as **Exhibit 4** is a true and correct copy of Trial Exhibit No. 89
24 from the trial in this case.

25 6. Attached as **Exhibit 5** is a true and correct copy of Trial Exhibit No.
26 212K from the trial in this case.

27 7. Attached as **Exhibit 6** is a true and correct copy of Trial Exhibit No. 724
28 from the trial in this case.

1 8. Attached as **Exhibit 7** is a true and correct copy of Trial Exhibit No. 740
2 from the trial in this case.

3 9. Attached as **Exhibit 8** is a true and correct copy of Trial Exhibit No. 746
4 from the trial in this case.

5 10. Attached as **Exhibit 9** is a true and correct copy of excerpts from the
6 transcript of the trial testimony in this case.

7
8 I declare under the penalty of perjury under the laws of the United States and the
9 State of California that the foregoing is true and correct.

10 Executed in San Francisco, California on April 4, 2013.

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12
13 /s/David M. Jolley
14 DAVID M. JOLLEY